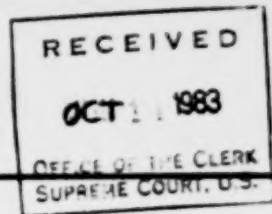
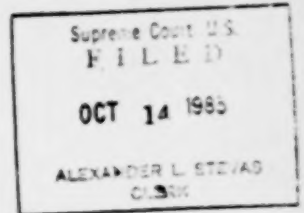


ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES
1983 TERM

No. 83-97



STATE OF NEVADA, by and through the WELFARE DIVISION of the
DEPARTMENT OF HUMAN RESOURCES and MARTHA VINE, Appellants,

v.

JOHN M. VINE, Respondent.

and

WELFARE DIVISION OF THE STATE OF NEVADA, DEPARTMENT OF HUMAN
RESOURCES, Appellant,

v.

JOHN MICHAEL VINE and MARTHA JO VINE, Respondents

BRIEF OF RESPONDENT JOHN MICHAEL VINE
IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT K. DORSEY
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Las Vegas, Nevada 89101
Telephone: (702) 384-2763

Counsel for Respondent JOHN
MICHAEL VINE

Date: October 10, 1983

16

ADDITIONAL QUESTIONS PRESENTED

1. Whether the State, in seeking reimbursement for welfare payments is a proper party to assert constitutional due process rights of a non-party child to the parent relationship with that child's father?
2. Does the Petition for Writ of Certiorari show:
 - (a) That a State court of last resort has decided a Federal question in a way in conflict with the decisions of another State court of last resort or of a Federal Court of Appeals (Supreme Court Rule 17.1(b)); or
 - (b) That a State court or Federal Court of Appeals has decided an important question of Federal law, which has not been but should be settled by the Supreme Court, or has decided a Federal question in a way in conflict with applicable decisions of the Supreme Court (Supreme Court Rule 17.1(c)).

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WELFARE DIVISION OF THE STATE OF NEVADA,
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v.

JOHN MICHAEL VINE and MARTHA JO VINE,
Respondents.

BRIEF OF RESPONDENT JOHN MICHAEL VINE
IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF NEVADA

Respondent JOHN MICHAEL VINE objects to the issuance of
a writ of certiorari to review the judgment and opinion of
the Supreme Court of the State of Nevada entered in this
proceeding on April 21, 1983.

ADDITIONAL STATEMENT OF THE CASE

At the time the parental rights of JOHN MICHAEL VINE were terminated on July 15, 1975, neither MARTHA JO VINE nor the minor child AMANDA LEE VINE were the recipients of Nevada state welfare. In fact, as the trial court noted, AMANDA LEE VINE, the minor, did not become a recipient of welfare assistance until 1981, some 6 years after the termination order. The trial court further found there was no evidence of any fraud or collusion on the part of the parties.

Although the undersigned counsel represents Respondent JOHN MICHAEL VINE, counsel has received a number of communications from MARTHA JO VINE, mother of AMANDA LEIGH VINE and the petitioner for the termination of JOHN MICHAEL VINE'S parental rights. MARTHA JO VINE has related to counsel that she did not expect to need welfare assistance for a substantial period of time, and also related that among the reasons for the termination of JOHN MICHAEL VINE'S parental rights was the fact that JOHN MICHAEL VINE had sustained a morals conviction relating to a young child and that, in the opinion of MARTHA JO VINE, JOHN MICHAEL VINE constituted a real and genuine hazard to the welfare of AMANDA LEIGH VINE and that, in her opinion, if any set aside were made of the Order Terminating Parental Rights, there would be a substantial harmful effect on AMANDA LEE VINE, the minor child.

JOHN MICHAEL VINE, in his papers before the trial court, indicated he would be delighted to support AMANDA LEIGH VINE, if he could resume the parental relationship. However, Nevada Revised Statute 128.120 expressly provides that an Order of Termination is conclusive and binding upon the party declared to be free from custody and control of his parent or parents, and that after the making of the Order, the court has no power to set aside, change or modify it, except through rights of appeal.

The Nevada Supreme Court has recognized the seriousness and terrible finality of a Decree Terminating Parental Rights. Carson v. Lowe, 76 Nev. 446, 451; 357 P.2d 591, 594 (1960) and also Chapman v. Chapman, 96 Nev. 290, 295; 607 P.2d 1141, 1145 (1980).

As also appears from the Affidavit in Support of Forma Pauperis, JOHN MICHAEL VINE would never have been able to discharge his parental responsibilities.

None of the parties to the termination has ever asserted that there were not sufficient grounds nor evidence in support of such termination. No such contention has been made by the father, JOHN MICHAEL VINE; nor the mother, MARTHA JO VINE, who petitioned for the termination; nor the minor child, AMANDA LEIGH VINE. It would have been a useless act to require JOHN MICHAEL VINE to submit to a trial to which he had no defense and which would only produce evidence of substantial embarrassment to him.

The State of Nevada appealed through the Supreme Court of the State of Nevada, asserting, among other things, that an Order Terminating Parental Rights did not terminate the obligation of support. The Nevada Supreme Court, in applying Nevada law and the laws of other States having similar Statutes, found that the obligation of support was extinguished by a valid judgment terminating parental rights.

The State of Nevada then asserted, and asserts in this Petition for Writ of Certiorari, that the child's constitutional rights have been violated because the child has lost her relationship with her father, and, on this basis, seeks to recover reimbursement for welfare payments. This claim is not asserted on behalf of the mother, the father, nor the child. It is respectfully submitted that the State of Nevada, through its Welfare Division, is not a proper party to assert the constitutional rights of a child to the parent-child relationship.

The following language appears in Vol. I Moore's Manual, pages 13-2 and 13-3:

"Cases construing the real party in interest provision can be more easily understood if it is borne in mind that the true meaning of real party in interest may be summarized as follows: An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced. This meaning is the one to be desired and has been carried out in the cases. The concept of 'real party in interest' has not been limited to one beneficially interested in the relief.

"Except where a federal law is involved, the substantive law to be looked to, of course, is the law of the State in which the Federal District Court is held. If by the State substantive law a person has an enforceable right, he is a real party in interest for the purpose of an action in Federal court."

It was related to counsel by Respondent MARTHA JO VINE, and, in turn, related to the Nevada Supreme Court on oral argument that substantial grounds existed for the termination of JOHN MICHAEL VINE'S parental rights, other than lack of support, neglect and abandonment. It is MARTHA JO VINE'S contention that JOHN MICHAEL VINE had had morals convictions relating to minors and that the continuation of the parent-child relationship constituted a real threat and hazard to the child, AMANDA LEIGH VINE.

It is respectfully called to the Court's attention that at the time JOHN MICHAEL VINE'S parental rights were terminated, Nevada Revised Statute 128.100 provided:

"In any such proceeding, the Judge may appoint an attorney to act on behalf of such minor person, or on behalf of the petitioner."

In 1981, Nevada Revised Statute 128.100 was amended to read as follows:

"1. In any proceeding for terminating parental rights or any rehearing or appeal, thereon, the court may appoint an attorney to represent the child as his counsel and guardian ad litem.

"2. If the parent or parents of the child desire to be represented by counsel but are indigent, the court may appoint an attorney for them.

"3. Each attorney appointed under the provisions of this section is entitled to the same compensation and expenses from the county as provided in NRS 7.125 for attorneys appointed to represent persons charged with crimes."

It is respectfully submitted that to allow the State of Nevada to assert the alleged constitutional rights of the minor, AMANDA LEIGH VINE, will seriously jeopardize AMANDA LEIGH VINE and will substantially harm AMANDA LEIGH VINE'S rights in the State's pursuit for reimbursement of welfare payments. If there is a constitutional right in the child AMANDA LEIGH VINE to be represented by counsel in a termination of parental rights proceeding, then this right must be pursued by a court appointed guardian ad litem and attorney for AMANDA LEIGH VINE. The interests of the State in AMANDA LEIGH VINE are directly conflicting and adversary. The real possibility exists that for the State to pursue these claims in the name of AMANDA LEIGH VINE will do AMANDA LEIGH VINE very great harm solely for the speculative and unlikely economic benefit of the State. The State must not be allowed to prosecute a claim that the minor AMANDA LEIGH VINE has a constitutional right to a parent relationship with her father JOHN MICHAEL VINE, with callous disregard to AMANDA LEIGH VINE'S own best interests. The State is totally an improper party to raise question 1 in the Petition for a Writ of Certiorari, that is,

"1. Whether a child is entitled to constitutional due process, notice and opportunity to be heard, in a termination of parental rights proceeding which terminates all of the child's rights.

(a) Whether a conclusive presumption that the interests of the child are the same as the parent petitioning for termination of parental rights is constitutionally valid."

The question presented as subparagraph (a) above -- whether a conclusive presumption that the interests of the child are the same as the parent petitioning for termination of parental rights is constitutionally valid -- is a wholly fictitious issue. No one -- none of the Nevada courts, and no party -- has ever asserted that the best interests of the child are presumed at all to be the same as the parent's, and certainly

not a conclusive presumption. The subparagraph would more properly be designated as whether the child's substantive rights should be sacrificed for the speculative possibility of economic reimbursement on the part of the State.

Respondent JOHN VINE next contends that the State of Nevada's Petition for Writ of Certiorari does not meet the jurisdictional requirements of Supreme Court Rule 17.1(b) or (c):

"(b) When a State court of last resort has decided a Federal question in a way in conflict with the decision of another State court of last resort or the Federal Court of Appeals.

"(c) When a State court or Federal Court of Appeals has decided an important question of Federal law, which has not been, but should be, settled by this court, or has decided a Federal question in a way in conflict with applicable decisions of this court."

The Petition for Writ of Certiorari totally ignores the the above requirements of subparagraphs (b) and (c). First, as to subparagraph (b), there is no attempt by the State in its Petition to show that the decision of the Nevada Supreme Court was in any way in conflict with the decision of any other State court of last resort or of a Federal Court of Appeals. As to subparagraph (c), the State has attempted to raise an issue, reciting Santosky v. Kramer, 455 U.S. 745 (1982), that more than a mere preponderance of the evidence is required to terminate a father's parental rights. There is no quarrel with this standard. This standard has long been followed by the State of Nevada. Carson v. Lowe, 76 Nev. 446, 451; 357 P.2d 591, 594 (1964); Chapman v. Chapman, 96 Nev. 290, 295; 607 P.2d 1141, 1145 (1980) (Termination of parental rights is drastic measure; evidence in case does not clearly show that severance of all ties with natural parent will serve child's best interest).

The State of Nevada has also agreed that the child's interests do not necessarily coincide with those of the party seeking termination of parental rights and the child has an

interest in preventing error from occurring. In this respect, the State of Nevada by statute has provided for appointment of an attorney or guardian ad litem and for payment for court appointed attorneys, and, in most cases, the courts require an investigative report from the Court Services Department. In this particular case, there was no duty in JOHN VINE to proceed to trial to protect his parental rights where the evidence against him was clear and convincing, and where he would be subjected to extreme embarrassment by the introduction of evidence on more serious accusations of unfitness.

Interestingly, the cases cited by the State of Nevada -- that is, Lassiter v. Department of Social Services, 452 U. S. 18, 27 (1981) and Santosky v. Kramer, 455 U.S. 745 (1982) deal with cases where the State sought to terminate the parent's parental rights.

In this particular case, the State is seeking to void the termination of parental rights, notwithstanding the fact that the evidence is abundant that JOHN MICHAEL VINE had abandoned and neglected his daughter and was an unfit parent. In this particular case, the State has no interest in the suitability of JOHN MICHAEL VINE as a parent.

Further, interestingly, the Court in Lassiter v. Department of Social Services, supra, dealt with a North Carolina statute which provided for the appointment of an attorney only where an Answer was filed opposing termination, and further construed that the need for an appointed attorney was to be considered on a case by case basis.

In this case, because of the overwhelming evidence supporting termination, JOHN MICHAEL VINE not only did not resist the termination of his parental rights, but consented thereto. With the neglect, abandonment and unfitness of JOHN MICHAEL VINE established, the best interests of AMANDA LEIGHT VINE required

that JOHN MICHAEL VINE'S parental rights be terminated. The appointment of an attorney for JOHN MICHAEL VINE or AMANDA LEIGH VINE, even though authorized by statute, would have been a useless act in these circumstances. The State is willing to be callous, in total disregard of the child's welfare, if only it can preserve the right to pursue the father for a very speculative financial benefit.

In the very numerous cases cited in the Santosky v. Kramer case, supra, it has long been held by this Court that Fourteenth Amendment rights as to family matters pertain peculiarly to the family and are also peculiarly matters of State concern. That this Petition for Writ of Certiorari is improvident is emphasized by the State's total disinterest in the best interests of the minor child or to the merits of termination of parental rights itself.

In this proceeding, JOHN MICHAEL VINE is a pauper. There is clear and convincing evidence that he is unfit, and there can be no benefit, but harm, to the minor child AMANDA LEIGH VINE to raise, in the child's name, objections to the termination procedure, so that the State might have a remote and speculative opportunity of financial reimbursement. The Nevada Supreme Court has never ruled on the constitutional issue raised by a child that that child's due process rights were violated by reason of lack of notice, by reason of failure to appoint a guardian or an attorney, so that there is no cause for the issuance of a Writ of Certiorari pursuant to Supreme Court Rule 17.1(c).

It is, therefore, respectfully submitted that the State of Nevada is a wholly improper person to assert and allege constitutional right in the minor child AMANDA LEIGH VINE for the detriment of that child; and, further, there has been no ruling on the

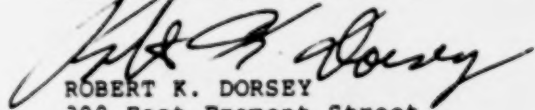
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child's constitutional rights by the Nevada Supreme Court
warranting the intervention of the United States Supreme Court at
this time by Writ of Certiorari.

DATED this 10th day of October, 1983.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert K. Dorsey", is written over the typed name.

ROBERT K. DORSEY
300 East Fremont Street
Suite 105
Las Vegas, Nevada 89101

Counsel for Respondent JOHN
MICHAEL VINE

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MOTION FILED
OCT 14 1983

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

1983 TERM

No. 83-97

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OCT 14 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF NEVADA, by and through the WEL-
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and

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ROBERT K. DORSEY
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Telephone: (702) 885-4170

Counsel for Appellant

MARTHA JO VINE
1721 Giner Tree Lane
Las Vegas, Nevada 89104

Respondent

10
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
AND TO APPOINT ATTORNEY FOR RESPONDENT

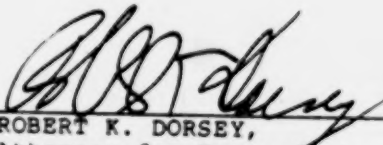
Respondent JOHN MICHAEL VINE moves the Court for an Order
permitting him to proceed in this Court in forma pauperis with

his response to Petition for a Writ of Certiorari to the Supreme Court of the State of Nevada for review of the Judgment of said Supreme Court entered in this cause on April 21, 1983.

Respondent JOHN MICHAEL VINE further moves the Court that it appoint ROBERT K. DORSEY as his attorney for the purpose of these proceedings and in the event of oral argument.

This Motion is made pursuant to the provisions of Title 28 United States Code §1915, and Rule 46 of the Rules of this Court, and in support thereof the Affidavit of said Respondent JOHN MICHAEL VINE.

Respondent's brief in opposition to Petition for Writ of Certiorari is being filed with this Motion and Respondent's Affidavit.



ROBERT K. DORSEY,
Attorney for Respondent
JOHN MICHAEL VINE,
300 East Fremont Street
Suite 105
Las Vegas, Nevada 89101

ORIGINAL

RECEIVED

JUN 1 1983

OFFICE OF THE CLERK
SUPREME COURT OF THE STATE OF NEVADA

IN THE
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STATE OF NEVADA, by and through the)
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HUMAN RESOURCES and MARTHA VINE,)

Appellants,)

vs.)

NO. 83-97

JOHN M. VINE,)

Respondent.)

and)

WELFARE DIVISION OF THE STATE OF)
NEVADA, DEPARTMENT OF HUMAN RESOURCES,)

Appellant,)

vs.)

JOHN MICHAEL VINE and MARTHA JO VINE,)

Respondents.)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL
AND FOR APPOINTMENT OF ATTORNEY

STATE OF NEVADA)
COUNTY OF CLARK) ss:

I, JOHN M. VINE, being first duly sworn, depose and say
that I am the Respondent in the above-entitled case; that in
support of my motion to proceed on appeal without being required
to prepay fees, costs or give security thereof, and for
appointment of attorney, I state that because of my poverty I am
unable to pay the costs of said proceeding or to give security
therefor or to pay the expenses of my attorney; that I believe I
am entitled to redress; and that the issues which I desire to
present on appeal are the following:

...

Robert H. Doney
ATTORNEY AT LAW
300 EAST FREMONT STREET, SUITE 108
LAS VEGAS, NEVADA 89101-5667
TELEPHONE (702) 384-2763

1 I further swear that the responses which I have made to
2 the questions and instructions below relating to my ability to
3 pay the cost of prosecuting the appeal are true.

4 1. Are you presently employed?

5 ANSWER: No. Last employment was September, 1981. I
6 earned approximately \$1,200.00 per month.

7 2. Have you received within the past twelve months
8 any income from a business, profession or other form of
9 self-employment, or in the form of rent payments, interest,
10 dividends, or other source?

11 ANSWER: No.

12 3. Do you own any cash or checking or savings
13 account?

14 ANSWER: No.

15 4. Do you own any real estate, stocks, bonds, notes,
16 automobiles, or other valuable property (excluding ordinary
17 household furnishings and clothing)?

18 ANSWER: Yes. A wrecked 1975 Ford Courier mini pickup
19 truck in running condition, with a value of between \$300.00 to
20 \$400.00.

21 5. List the persons who are dependent upon you for
22 support and state your relationship to those persons.

23 ANSWER: None.

24 I understand that a false statement or answer to any
25 question in this affidavit will subject me to penalties for
26 perjury.

27 John M. Vine
28 JOHN M. VINE

29
30 SUBSCRIBED and SWORN to before me
31 this 30th day of September, 1983.

32 Sandra Gove
NOTARY PUBLIC in and for said
County and State



SANDRA GOVE
Notary Public - State of Nevada
CLARK COUNTY
My Appointment Expires Jan. 25, 1984